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United States Senate

COMMITTEE ON SMALL BUSINESS

WASHINGTON, DC 20510-6350

April 27, 2000

Mr. Robert Pitofsky
Chairman
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580

Dear Chairman Pitofsky:

On March 28, 2000, the Senate Committee on Small Business (Committee) held a hearing on the fraudulent telemarketing of office supplies, specifically printer and copier toner, and its effect on small businesses. At the hearing, several witnesses testified about fraudulent office suppliers that after having been the subject of enforcement actions, re-open their operations and engage in the same illegal activities. The Committee also conducted its own investigation into the telemarketers about which witnesses testified at the hearing. The Committee's investigation uncovered two instances of individuals that were the subject of enforcement actions by the Federal Trade Commission (Commission) and the Postal Inspection Service for deceptively selling office supplies apparently engaging in the same activity several years later under different company names.

Witnesses at the hearing testified that the civil-money penalties that fraudulent telemarketers pay in connection with settlements they enter into with law enforcement authorities are considered merely a "cost of doing business" and do not act as an effective deterrent. While the Commission can refer for criminal contempt prosecution recidivists that breach consent decrees, the Committee received testimony that the Commission has not referred a substantial number of such cases. Accordingly, several witnesses, including Jodie Bernstein, Director of the Bureau of Consumer Protection at the Commission, addressed the potential of increasing the maximum civil-money penalty that the Commission is authorized by statute to obtain.

It is my understanding that the maximum civil penalty that the Commission may seek in a civil action under section 5 of the Federal Trade Commission Act is currently \$11,000 per day, although the Commission is required to increase this penalty at least once every four years to reflect inflation. I am interested in learning the Commission's opinion about whether the maximum civil-money penalty currently permitted in section 5 of the FTC Act should be increased in addition to any inflation adjustments, either for first or subsequent offenses, to serve as a more effective deterrent to deceptive business practices. I am also interested in the Commission's view on the maximum amount that Congress should establish for such penalty.

Chairman Pitofsky

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Thank you for your consideration of these matters. I look forward to working with the Commission to fashion a legislative response, if appropriate, to this issue in the next several weeks. Once again, I appreciate the Commission's continuing cooperation with the Committee's hearings and investigations on deceptive or unfair trade practices that are particularly harmful to the small business community.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bond", written in a cursive style.

Christopher S. Bond
Chairman